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Letter dated 16 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 23 April 2003 (S/2003/471).

The Counter-Terrorism Committee has received the attached third report from Argentina submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 11 July 2003 from the Permanent Representative of Argentina to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

On instructions from my Government, I have the honour to submit the report requested in your letter of 23 April 2003 (S/2003/471), supplementary to the reports submitted on 27 December 2001 (S/2001/1340) and 30 August 2002 (S/2002/1023).

I should be grateful if you could arrange for this letter and the attached report to be circulated as a document of the Security Council.

(*Signed*) Arnoldo M. **Listre**
Ambassador
Permanent Representative

Enclosure

Third report of the Argentine Republic on the implementation of Security Council resolution 1373 (2001)

In his note S/AC.40/2002/MS/OC.215 of 4 April 2003 the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) (Counter-Terrorism Committee) transmitted to the Government of the Argentine Republic comments and questions raised by the report submitted by Argentina on its implementation of the resolution (S/2001/1340) and the supplementary report that followed (S/2002/1023). Those comments and questions focused on two areas: (a) measures taken by Argentina to implement the resolution, and (b) issues relating to assistance and guidance for implementing the resolution.

As indicated in the note, the Committee is at present concentrating on "Stage A" priorities, namely that: (a) States should have legislation in place covering all aspects of the resolution, and a process in hand for ratifying as soon as possible the 12 international conventions and protocols relating to terrorism, and (b) States should have in place effective executive machinery for preventing and suppressing the financing of terrorist acts.

Below are the replies to the Committee's questions, in the order established in the note.

I. Implementation measures

1.2 Effective implementation of subparagraph 1 (b) of the resolution requires a State to have in place provisions specifically criminalizing the wilful provision or collection of funds by its nationals or in its territory, by any means, directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. For an act to constitute an offence as described above it is not necessary that the funds are actually used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- The only related terrorist attack takes place or is intended to take place outside Argentina;
- No related terrorist act actually occurs or is attempted;
- No transfer of funds from one country to another takes place; or
- The funds are legal in origin.

The current provisions in the law of Argentina do not appear to meet the above-mentioned requirements, noting in particular article 210 of the Penal Code which seems to be focused on obtaining information in order to prevent or suppress terrorist acts. It is noted from the replies to paragraph (1) contained in Argentina's first and supplementary reports to the CTC that an inter-ministerial committee of experts has been set up for the purpose of analysing and assessing the extent to which Argentine criminal law is in line with international conventions concerning

terrorism and preparing such draft legislation as may be necessary. The CTC would be grateful for a progress report in this regard.

The inter-ministerial committee, established pursuant to resolution 189/2002 of the then Ministry of Justice and Human Rights, has met on several occasions in the offices of the Ministry, and has studied reports submitted by its members.

Pursuant to resolution 182/02 of the Ministry of Justice, Security and Human Rights, of 15 October 2002, the time frame for the completion of the work of the committee was extended to 20 April 2003.

On 13 June 2003, the Ministry of Foreign Affairs, International Trade and Worship opened a dossier containing draft legislation based on the work of the inter-ministerial committee mentioned above, which is being submitted to the various competent areas of the Government for their consideration.

The draft legislation covers the following matters:

(a) Amendment of article 1 of the Penal Code on the range of application of the criminal law, in order to cover the jurisdictional scope of the international agreements to which Argentina is a party;

(b) Characterization of the financing of terrorism as a separate offence;

(c) Amendment of the definition of unlawful association and related matters (article 210 et seq. of the Penal Code), so as explicitly to include financing;

(d) Amendment of Act No. 25,246 on money-laundering to adapt it to the obligations arising from the International Convention for the Suppression of the Financing of Terrorism; and

(e) Introduction of special procedural mechanisms based on the provisions of Act No. 23,737 on drug trafficking.

The amendment to article 1 of the Penal Code enables a domestic judge to implement Argentine criminal law as provided under international agreements. Accordingly, Argentine penal jurisdiction is broadened to cover cases of terrorism committed outside the territory of the Argentine Republic, provided that they fulfil the conditions established in those agreements.

The draft legislation adds two new articles to the Code, providing for the financing of terrorism as a separate offence (in other words, whether or not the terrorist act is committed), in accordance with the approach taken in the International Convention for the Suppression of the Financing of Terrorism.

It also amends the definition of unlawful association, in accordance with Recommendation 2 of the Financial Action Task Force on Money Laundering (FATF), which recommends the criminalization of the financing of terrorist organizations. These amendments should, moreover, encompass such offences as "conspiracy", which is covered in the International Convention for the Suppression of the Financing of Terrorism, article 2, paragraph 5 (c).

1.3 Effective implementation of paragraph 1 of the resolution also requires an appropriate monitoring mechanism (involving, for example, registration and auditing requirements) to ensure that the funds collected by organizations which have or claim to have charitable, social or cultural goals are not diverted to purposes other than their stated purposes, in particular to the financing of terrorism. The

supplementary report in reply to subparagraph 1 (d) refers to the General Inspectorate of Justice permanently overseeing charitable, social or cultural entities within the bounds of the Autonomous City of Buenos Aires. Please outline the legal and institutional mechanisms in Argentina that oversee registration, auditing, and the collection and use of funds by such institutions in the rest of the territory of Argentina.

The responsibilities of oversight and registration which are carried out within the bounds of the Autonomous City of Buenos Aires — the federal capital of the country — by the General Inspectorate of Justice, are areas of competence which are not assigned by the provincial Governments to the federal Government within the Argentine constitutional order. Therefore, each provincial jurisdiction must establish an agency equivalent to the General Inspectorate of Justice to carry out the task of oversight. The basic requirements established in, inter alia, the Civil Code and Act 19,836 on foundations, are, however, uniformly applicable throughout the territory.

It should also be noted that international treaties and United Nations Security Council resolutions adopted pursuant to Chapter VII of the Charter become part of federal law and therefore obligatory at all levels of the federal Government. For that reason, the national decrees publicizing those resolutions stipulate that the provinces — which, in accordance with article 128 of the National Constitution are the natural agents of the federal Government for the implementation of the Constitution and the laws — must in their jurisdictions adopt the necessary measures to ensure fulfilment of Security Council resolutions.

1.4 The CTC notes that, in relation to the implementation of paragraph 1, as stated in the paragraph immediately above, the information supplied by Argentina in its first and supplementary reports would appear to be limited to the monitoring of charitable, social or cultural organizations. In neither report does Argentina provide information concerning: (a) the licensing and/or registering of persons or legal entities which transmit money or assets, including depositary and money service businesses; and (b) the requirement for financial institutions to include originator information (e.g. name, address and account number) on all transfers of funds. The CTC would be grateful if Argentina could provide the Committee with information as to whether it licenses or otherwise regulates persons or legal entities which transmit money and whether it requires originator information in relation to all transfers of funds.

The transfer or shipment of money, including informal systems for the transfer of assets and money, is governed by Decree No. 1187/93 regulating the postal service. Under the decree, post offices must obtain a licence in order to operate; it is a general licence, and no specific licence is required for the execution of money shipments. They must, however, register with the National Communications Commission in order to carry out such transactions.

Under Act No. 25,246 on money-laundering and resolution 9/03 of the Financial Intelligence Unit, the transfer or shipment of money, including informal systems for the transfer of assets or money, is subject to the recommendations of the Financial Action Task Force, namely: identification of the client and recording of that information, verification of the true identity of the person in whose name the transaction is carried out, preservation of the transaction record for five years, and transmission of such information to the competent authorities when it is suspected that the funds in question derive from criminal activities.

Failure to comply with the obligation to keep a transaction record and with the requirements regarding the identity of the originator are subject to administrative sanctions as provided under Act No. 25,246 and UIF resolution 9/03, mentioned above.

1.5 Effective implementation of subparagraph 2 (d) of the resolution requires each member State to criminalize the use of its territories for the purpose of committing a terrorist act against another State or its citizens or for the purpose of financing, planning or facilitating of terrorist acts against another State or its citizens, even though no related terrorist act has been committed or attempted. In its first report, Argentina draws attention to article 210 of the Penal Code which criminalizes the participation in an association or group of three or more persons existing for criminal purposes, simply by virtue of being a member of the association. The CTC notes from the report that the type of unlawful association that is criminalized is with three or more persons which suggests that an association with one or two persons for criminal purposes is not included in the definition of unlawful association. The CTC would appreciate a detailed description of how article 210 of the Penal Code meets entirely the requirement set out above?

Subparagraph 2 (d) of the resolution obliges States to prevent the use of their territory for financing, planning, facilitating or committing terrorist acts against other States or their citizens. As indicated in the first report, the penal definition of the kinds of conduct that constitute terrorist acts contained in the Penal Code and in related laws fulfil, from the standpoint of the criminal law, the requirement discussed by the Committee.

Article 210, along with its provisions for aggravating circumstances, penalizes an individual for belonging to a group of three or more individuals whose objective is the commission of a crime, solely because he belongs to the group, and regardless of whether the planned act is committed in Argentina or elsewhere.

In cases in which article 210 does not apply, as, for instance, when there are fewer than three persons, the general provisions of the Penal Code against criminal involvement (such as aiding and abetting or complicity) apply.

It should be pointed out, however, that the draft law mentioned above includes a definition of conspiracy to commit terrorist acts. This definition was specifically introduced to broaden criminal responsibility to cover acts prepared by groups of fewer than three individuals. The definition was formulated on the basis of article 29 bis of Act No. 23,737 on drug trafficking, which states that:

> "Anyone who participates in a conspiracy of two or more persons, for the purpose of committing any of the offences set out in articles 5, 6, 7, 8, 10 or 25 of this law, and in article 866 of the Customs Code shall serve a term of 1 to 6 years of ordinary or rigorous imprisonment. Conspiracy shall be punishable starting from the moment in which any of its members carry out acts demonstrating that a mutual decision has been taken to commit the offence for whose purpose they have banded together. Anyone who reports the existence of the conspiracy to the authorities before the offence for whose purpose they have banded together has begun to be committed shall be exempt from punishment, as shall anyone who spontaneously prevents the plan from being carried out."

1.6 Effective implementation of subparagraph 3 (d) of the resolution requires States to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of December 1999. The supplementary report indicates that two conventions and one protocol are under consideration by the National Congress with a view to possible adoption. The CTC would welcome a progress report on the adoption and ratification of the three instruments.

The International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997) has been approved by the Senate but not by the Chamber of Deputies. It earned a favourable review from the foreign relations and criminal law committees of the Chamber, and is on the agenda for consideration by that house, which will complete the legislative process.

The International Convention for the Suppression of the Financing of Terrorism (New York, 18 November 1999) has also been approved by the Senate but not by the lower house. It earned a favourable review from the foreign relations and criminal law committees of the Chamber of Deputies, and is awaiting consideration before the Commission on Human Rights Guarantees.

The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 3 October 1988) is currently under consideration by the Senate foreign relations committee.

Once these agreements are approved by Congress, the Executive Power will proceed to ratify them as soon as possible.

1.7 Paragraph 4 of the resolution notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security. On page 32 of its report, Argentina lists the matters that are still receiving attention of the relevant authorities. The CTC would appreciate detailed information on progress made with respect to the matters listed on page 32.

Following the submission of that report, Argentina launched an initiative to coordinate regional activities in the tri-border area between Argentina, Brazil and Paraguay, principally for the purpose of enhancing cooperation to combat terrorism, illicit drugs, money-laundering, the smuggling of weapons and explosives, and other related offences.

The activities of groups suspected of being linked to terrorism and related offences in that area are being monitored on an ongoing basis. The Tri-border Tripartite Command was set up, composed of security forces from the three countries, with a view to strengthening cooperation in combating the unlawful activities mentioned above.

Argentina also promoted the establishment of the 3+1 Mechanism (Argentina, Brazil and Paraguay plus the United States). The first meeting of that mechanism, which was held in Buenos Aires and in the tri-border area on 17 and 18 December 2002, dealt with cooperation in detecting financing of terrorism, money-laundering, weapons smuggling and cooperation in intelligence matters and border control.

This meeting also addressed the establishment of a monitoring mechanism, and called for a meeting on the subject of tri-border security, which was held in March 2003 in Ciudad del Este and participated in by delegations from the three tri-border countries. The meeting discussed the development of cooperation in the region and preparations for the next 3+1 meeting, to be held in Paraguay in 2003.

Also within the framework of that mechanism, a meeting was held on the subject of 3+1 financial intelligence in the tri-border region, in Brasilia on 21 and 22 May 2003. Its purpose was to continue to implement cooperation initiatives on preventing financing of terrorism. The four participating countries agreed to address the additional themes of border control and capacity-building and training. At the meeting, agreement was reached on the need to put into place an integrated monitoring system and to enhance the flow of information between the financial intelligence units of the participating countries.

The next meeting of the ad hoc 3+1 Mechanism will be held in Asunción before the end of 2003; the date is yet to be determined.

Likewise, also within the framework of regional cooperation, Argentina took part in the deliberations of the Third Regular Session of the Inter-American Committee against Terrorism (CICTE), held in San Salvador from 22 to 24 January 2003, and was represented by a delegation from the Office of the Special Representative on Terrorism and Related Offences of the Ministry of Foreign Affairs, International Trade and Worship.

During the meeting, the Argentine delegation proposed that Buenos Aires should serve as host city for the OAS Cyberspace Security Conference, scheduled for 28 and 29 July 2003. The Special Representative on Terrorism, whose office is coordinating arrangements for that meeting, intends to participate in the first CICTE National Points of Contact Meeting, to be held in Washington on 14 and 15 July 2003.

II. Assistance and guidance

2.1 The CTC is eager to facilitate the provision of assistance and advice in connection with the implementation of the resolution. It encourages Argentina to inform the CTC of any areas in which assistance or advice might be of benefit in taking forward the implementation of the resolution in Argentina, or of any areas in which Argentina might be in a position to offer assistance or advice to other States on the implementation of the resolution.

2.3 The CTC notes that there is no mention in the reports submitted by Argentina of areas where it might be able to provide assistance to other States in connection with the implementation of the resolution.

With respect to the priorities set out by the Committee, one of the main obstacles confronting the Argentine Republic in applying and implementing the resolution is the difficulty involved in the political process of formulating and adopting laws, both domestic legislation and international agreements.

As for the areas in which the Argentine Republic might be in a position to offer assistance, it should be mentioned that the Terrorism Prevention Branch of the Centre for International Crime Prevention of the United Nations Office at Vienna

plans to assemble a group of Argentine experts to offer technical advice on legislation to countries of the region which have requested legal assistance from the Committee. In its first report, moreover, Argentina offered to provide experts in the areas of extradition and customs law and practice. Argentina is prepared to continue to offer any assistance and guidance it can, especially experts on judicial investigation into cases of terrorism, and on adaptation of the legislative framework with respect to terrorism.